Federal Court Cour fédérale

Date: 20240426

Docket: IMM-6033-23

Citation: 2024 FC 640

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 26, 2024

PRESENT: Madam Justice St-Louis

BETWEEN:

SAFA YOU BAH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In 2016, the applicant arrived in Canada from China without identity papers or travel documents, and claimed refugee protection. He described himself as a citizen of Guinea and cited a fear of returning to Guinea based on his political affiliation with the Union of Guinea's

Democratic Forces (Union des forces démocratiques de Guinée [UFDC]) party and his ethnic profile as Fulani.

[2] In February 2019, the Refugee Protection Division [RPD] rejected the applicant's refugee protection claim and concluded, on the basis of the evidence before it, that the applicant had failed to establish, on a balance of probabilities, that he was a citizen of Guinea named Safa You Bah. In particular, the RPD noted that (1) the applicant had not submitted a passport or proof of travel to Canada; (2) the birth certificate he submitted was not authentic; (3) the driver's licence he submitted was fraudulent; and (4) the name he wrote on his forms (Safa You Bah) differed from the name on the documents he submitted to confirm his identity (Safaiyou Bah).

[3] The applicant appealed the RPD's decision to the Refugee Appeal Division [RAD]; he did not submit any additional documents. In August 2019, the RAD confirmed the RPD's decision and dismissed the applicant's appeal. The RAD confirmed the RPD's aforementioned considerations and added that the applicant's failure to submit or attempt to obtain a Guinean national identity card contributed to the conclusion that he had failed to establish his identity. The applicant challenged the RAD's decision before the Court, but subsequently discontinued his challenge.

[4] In November 2022, the applicant filed an application for a pre-removal risk assessment [PRRA]. He pointed out in his affidavit that (1) he was a member of the UFDG; (2) he was Fulani; (3) the Guinean authorities persecuted members of the UFDG for their political opinions; and (4) the Guinean authorities persecuted members of the Fulani tribe because of their ethnicity.

The applicant alleged generally that he was at risk of persecution, torture and cruel and unusual treatment, that his life was at risk, and that this risk was personalized because of his personal profile as a member of the UFDG and as a Fulani man.

[5] In his submissions in support of the PRRA application, the applicant appears to dispute the findings of the RPD and RAD as to the authenticity of the birth certificate and driver's licence he had submitted to establish his identity. In further support of his PRRA application, the applicant also submitted additional documents intended to establish his identity, citizenship, ethnicity and political profile, and the risk he would face in the event he were to return to Guinea.

[6] On March 20, 2023, a senior immigration officer with Immigration, Refugees and Citizenship Canada [Officer] rejected the PRRA application.

[7] In his decision, the Officer noted that the RPD and the RAD had rejected the applicant's claim for refugee protection because he had been unable to establish his identity.

[8] With regard to the alleged risk based on the political profile, the Officer found that the evidence submitted by the applicant to establish his identity lacked probative value, and that this evidence was consequently insufficient to establish the facts alleged by the applicant with respect to his political profile. In other words, the Officer concluded that the risks associated with the applicant's political profile as a member of the UFDG had not been established and that the evidence remained insufficient, given that all of the evidence submitted was based on the fact

that the applicant's identity was Safaiyou Bah, an identity that he was unable to establish on a balance of probabilities.

[9] With regard to the alleged risk due to the applicant's Fulani ethnic origin, the Officer found that, given that the applicant had not established his identity, the evidence submitted concerning his political involvement had little probative value. The Officer also pointed out that the applicant had not filed any documents regarding the situation faced by the Fulani in Guinea. The Officer noted that, according to his own research, there had been clashes in 2013, and that the applicant had not submitted any evidence establishing that there were still tensions

[10] Ultimately, the Officer concluded that, given the insufficiency of the evidence, the applicant had not met his burden under section 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*Immigration Act*].

[11] The applicant is asking the Court to set aside the Officer's decision and order a new review of his PRRA application, providing him with the opportunity to update his record.

[12] Before the Court, the applicant argues that (1) having determined that the applicant had not established his identity, the Officer committed a fatal error by failing to assess the risk he would face in the event he were to return to Guinea (*Lapido v Canada (Citizenship and Immigration)*, 2014 FC 408 [*Lapido*]; *Bah v Canada (Citizenship and Immigration)*, 2023 FC 570; *Rinchen v Canada (Citizenship and Immigration)*, 2022 FC 437); and (2) that the Officer committed a further error by attaching "low probative value" to documents which he concluded

did not speak of the applicant and by failing to rule on the authenticity of the applicant's documents (*Oladekoye v Canada (Citizenship and Immigration)*, 2022 FC 449; *Ogbebor v Canada (Citizenship and Immigration)*, 2022 CF 670 at paras 20–21; *Linadi v Canada (Citizenship and Immigration)*, 2022 FC 1341 at para 41; *Mabirizi v Canada (Citizenship and Immigration)*, 2021 FC 1354 at paras 18–20).

[13] For the reasons set out below, the application for judicial review is dismissed. In short, the applicant has not persuaded me (1) that the Officer in this case was required to consider the risk and, in any event, that, once he had ruled on his identity, the Officer failed to consider the risk invoked by the applicant; and (2) that it is appropriate for the Court on judicial review to reweigh the evidence.

II. Analysis

A. *Standard of review*

[14] The decision must be reviewed on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 85). Indeed, according to *Vavilov*, the standard of review that is presumed to apply is reasonableness, and there is nothing that would rebut that presumption in this case (see *Flores Carrillo v Canada (Minister of Citizenship and Immigration) (FCA)*, 2008 FCA 94 at para 36; *Benko v Canada (Citizenship and Immigration)*, 2017 FC 1032 at para 15; *Fares v Canada (Citizenship and Immigration)*, 2017 FC 797 at para 19).

[15] When the reasonableness standard of review applies, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100). The Court's focus "must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83), to determine whether the decision is "based on an internally coherent and rational chain of analysis and . . . is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). It is not for the Court to substitute its own view of a preferable outcome (*Vavilov* at para 99).

B. *The Officer did not fail to consider the risk*

[16] The applicant argues that the Officer committed the same error as that articulated by the Court in *Lapido*. I disagree.

[17] First, I agree with Justice Yvan Roy's findings in paragraph 32 of his decision in *Aboud v Canada (Citizenship and Immigration)*, 2014 FC 1019, a decision cited by the respondent in his memorandum. In reviewing a PRRA decision similar to the one at issue in this application, Justice Roy determined that:

> I conclude that it was a reasonable decision, within the articulation of that standard in *Dunsmuir*, above. Given the applicant's failure to put before the PRRA Officer admissible evidence that was capable of challenging the RPD decision, the PRRA Officer did not displace the RPD decision regarding the applicant's credibility. The applicant simply has not proven his identity as a Somali national. Without proof of identity, the risks alleged by the applicant should he be removed to Somalia are not relevant to the PRRA. Without first establishing his identity, he cannot make out a well-founded fear of persecution or risk requiring that he be deemed a protected person: *Husein v Canada (Citizenship and Immigration)*, [1998] FCJ No 726 at paragraph 13; *Morka v*

Canada (Citizenship and Immigration), 2007 FC 315 at paragraph 19. [Emphasis added]

[18] Since the applicant in this case has failed to establish his identity, be it his personal identity or even his citizenship, he cannot make out a well-founded fear of persecution or risk requiring that he be deemed a protected person.

[19] In addition, and in any event, I am satisfied that in this case the Officer nevertheless considered the risk asserted by the applicant; in particular, the Officer considered whether the applicant had established the profile on which his alleged risks were based and concluded that the applicant had not. The situation in this case is rather similar to that described by Justice Patrick Gleeson in *Adebayo v Canada (Citizenship and Immigration)*, 2022 CanLII 504 (FC), although that decision was made in the context of a motion to stay the execution of a removal order. The applicant's situation differs from that in *Lapido*, in which the applicant's profile and country of citizenship were established, which is not the case here.

[20] Thus, I find that the Officer's decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker. The applicant simply failed to meet his burden.

C. *The Officer reasonably concluded that the new documents were insufficient*

[21] As the Officer pointed out, the applicant has been well aware since 2019 that his identity—both his citizenship and his personal identity—was problematic. Indeed, both the RPD and the RAD concluded that the applicant had failed to establish either his personal identity or

his country of citizenship. Both the RPD and the RAD were concerned that the applicant had not, for example, submitted a passport, travel document or national identity card from Guinea. Several years later, the applicant chose to submit new documents before the PRRA Officer, none of which was a primary identification document and did not allow the applicant to be identified by means of a photograph.

[22] Indeed, before the Officer, the applicant filed (1) his own affidavit; (2) a summons from the department of security; (3) an arrest warrant from the investigating justice's office; (4) a medical report; (5) eight letters of support; (6) a letter from the UFDG; (7) an attestation from the UFDG; (8) a membership certificate from the Coordination nationale des Fulbhé et Haali-Pular de Guinée; (9) a UFDG membership card; and (10) photographs.

[23] The Officer determined that this new evidence was insufficient to establish the applicant's identity. In particular, the Officer noted that the applicant had been aware of the questions about his identity since 2019, but had nevertheless not addressed this issue directly, given that the documents he had submitted were not primary identification documents. The Officer further found that none of the newly submitted evidence constituted photographic identification, primary or otherwise. In the same vein, the Officer noted that the applicant did not explain why he was unable to obtain a passport, or the circumstances preventing him from producing a primary identification document.

[24] The Officer also pointed out that the applicant did not explain where the photographs he submitted were taken, nor in what context, and that the aforementioned photographs were not dated.

[25] Given the circumstances of this matter, the decisions rendered by the RPD and RAD and the type of evidence submitted by the applicant, the latter has not demonstrated that the Officer's findings were unreasonable. Rather, the applicant's arguments amount to an attempt to have the Court reweigh the evidence in order to reach a different conclusion from that of the Officer, which the Court cannot do on judicial review (*Vavilov* at para 125).

III. Conclusion

[26] The applicant has not met his burden of demonstrating that the decision lacks the hallmarks of reasonableness, and that it is not transparent, intelligible and justified (*Vavilov* at para 99). In light of the evidence on the record and the applicable provisions, there is no reason for the Court to intervene.

JUDGMENT in IMM-6033-23

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question is certified.

3. There is no award as to costs.

"Martine St-Louis"
Judge

Certified true translation
Sebastian Desbarats

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6033-23
STYLE OF CAUSE:	SAFA YOU BAH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTREAL, QUEBEC
DATE OF HEARING:	MARCH 21, 2024
JUDGMENT AND REASONS:	ST-LOUIS J
DATED:	APRIL 26, 2024

APPEARANCES:

Richard Wazana	FOR THE APPLICANT
Leila Jawando	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Wazana Law Barrister and Solicitor/Avocat et Notaire Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT